IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 2980 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHRAMBHATT RAMNLAL PURSHOTTANDAS - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NITIN M AMIN for Applicant(s) : 1,
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR BHARAT T RAO for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/02/2007

ORAL JUDGMENT

1. The petitioner is accused No.2 in Criminal Case No.98/95 pending in the court of learned JMFC,

Visnagar and has prayed for setting aside the order dated 10.1.1995 of learned JMFC whereby summons was ordered to be issued to him for the offence under section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act"). Admittedly, and according to the complaint itself, the drawer of the cheque which was dishonoured was accused No.1 and the only involvement of the present petitioner was that he had delivered the cheque in question to the complainant. It was on that basis argued that, the petitioner could not be implicated and the order to issue summons to him was required to be set aside. Learned counsel Mr N.M. Amin, relied upon judgment of the Supreme Court in **Anil Hada v. Indian Acrylic Ltd.** (2001 SCC (Criminal) 174 wherein it is observed in para 9 that the offender in section 138 of the Act was the drawer of the cheque and penal liability could be cast on other persons if provisions of section 141 applied.

2. Learned counsel Mr B.T. Rao, appearing for the original complainant vehemently argued without any basis in the record and any factual foundation or

averment, that the petitioner was a partner of accused no.1, and they had jointly entered into an agreement with the complainant pursuant to which the cheque in question had come to be given to the complainant.

3. Since no averment could be found either in the complaint or in the statement recorded below it to attract provisions of section 141 of the Act and no action having been attributed to the petitioner except that of delivering the cheque, the application is required to be allowed. Accordingly it is allowed and the criminal case as well as the order below the complaint to issue summons to the petitioner is hereby quashed. Rule is made absolute accordingly and interim relief is vacated with the observation that the trial against the other accused should proceed as expeditiously as practicable. No costs.

[D. H. Waghela, J.]

msp